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PATENT
Dkt. STL03262

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re Application of: **SonSeng Yeow and ChinLin Tan**

Assignee: **SEAGATE TECHNOLOGY LLC**

Application No.: **10/692,516**

Group Art: **3687**

Filed: **October 24, 2003**

Examiner: **Vanel Frenel**

For: **SYSTEM AND METHOD FOR INVENTORY REPLENISHMENT**

Mail Stop Appeal Brief - Patents

Commissioner for Patents

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ATTENTION: Board of Patent Appeals and Interferences

APPELLANT'S BRIEF

This Brief is in furtherance of the Notice of Appeal filed on March 24, 2009 and the Notice of Panel Decision mailed on May 6, 2009. The required fees, any required petition for extension of time for filing this Brief, and the authority and time limits established by the Notice of Appeal are dealt with in the accompanying TRANSMITTAL OF APPEAL BRIEF.

This Brief contains these items under the following headings, and in the order set forth below:

- I. REAL PARTY IN INTEREST
- II. RELATED APPEALS AND INTERFERENCES
- III. STATUS OF CLAIMS
- IV. STATUS OF AMENDMENTS
- V. SUMMARY OF CLAIMED SUBJECT MATTER
- VI. GROUNDS OF REJECTION TO BE REVIEWED ON APPEAL
- VII. ARGUMENT
- VIII. CLAIMS APPENDIX
- IX. EVIDENCE APPENDIX
- X. RELATED PROCEEDINGS APPENDIX

I. REAL PARTY IN INTEREST

The real party in interest in this application is Seagate Technology LLC.

II. RELATED APPEALS AND INTERFERENCES

There are no related appeals or interferences.

III. STATUS OF CLAIMS

The status of the claims in this proceeding is:

<u>Claim</u>	<u>Status</u>
1. (Canceled)	
2. (Canceled)	
3. (Canceled)	
4. (Canceled)	
5. (Canceled)	
6. (Canceled)	
7. (Canceled)	
8. (Previously presented)	Independent.
9. (Canceled)	
10. (Previously presented)	Depends from claim 8.
11. (Previously presented)	Depends from claim 8.
12. (Previously presented)	Depends from claim 8.
13. (Previously presented)	Depends from claim 8.
14. (Previously presented)	Depends from claim 25.
15. (Previously presented)	Independent.
16. (Canceled)	
17. (Canceled)	
18. (Canceled)	
19. (Canceled)	
20. (Canceled)	
21. (Canceled)	
22. (Canceled)	
23. (Canceled)	
24. (Previously presented)	Depends from claim 8.
25. (Previously presented)	Depends from claim 24.
26. (Previously presented)	Depends from claim 15.
27. (Previously presented)	Depends from claim 15.
28. (Previously presented)	Depends from claim 15.
29. (Previously presented)	Depends from claim 15.
30. (Previously presented)	Depends from claim 15.
31. (Previously presented)	Depends from claim 30.
32. (Previously presented)	Depends from claim 31.

A. TOTAL NUMBER OF CLAIMS IN APPLICATION

Claims in the application: 8, 10-15, and 24-32.

B. STATUS OF ALL THE CLAIMS

1. Claims canceled: 1-7, 9, and 16-23
2. Claims withdrawn from consideration but not canceled: none
3. Claims pending: 8, 10-15, and 24-32
4. Claims allowed: none
5. Claims rejected: 8, 10-15, and 24-32
6. Claims objected to: none

C. CLAIMS ON APPEAL

Claims now on appeal: 8, 10-15, and 24-32

IV. STATUS OF AMENDMENTS

Appellant filed an after-final amendment on February 24, 2009, which the Office entered in the record. Appellant also filed a Pre-Brief Request for review on March 24, 2009.

V. SUMMARY OF CLAIMED SUBJECT MATTER

Embodiments of the present invention as recited by the language of independent claim 8 contemplate a system for replenishing low inventory (specification pg. 8:2-8). The system includes a first terminal associated with a user's site for entering and displaying information (such as 105, 110, specification pg. 9:4-14). The system also has a second terminal associated with a supplier's site for entering and displaying information (such as 115, 120, specification pg. 10:3-6). A network is connected to the first terminal and the second terminal for exchanging information between the first terminal and the second terminal (such as 145, specification pg. 8:18 to pg. 9:1). A replenishment module executes computer readable instructions stored in memory (such as the steps depicted in FIG. 2) to continuously display a signal having a first

visual characteristic simultaneously to both terminals in response to the user requesting a replenishment of inventory (specification pg. 12:19 to pg. 13:6). The replenishment module subsequently modifies the signal simultaneously to both terminals to continuously display a second visual characteristic different than the first visual characteristic responsive to the supplier sending the requested replenishment of inventory and during the time that the requested replenishment of inventory is in transit to the user (specification pg. 14:4-18).

Embodiments of the present invention as recited by the claims that depend from independent claim 8 contemplate the first and second visual characteristics can be graphical representations of data (specification pg. 27:12-14, pg. 13:7-12, pg. 18-23). In some embodiments the first visual characteristic can be a first color and the second visual characteristic can be a second color different than the first color (specification pg. 13:1-3). For example, the first visual characteristic can include highlighting a portion of both terminals red (specification pg. 13:3-5), and the second visual characteristic can include highlighting the portion of both terminals yellow (specification pg. 14:14-16).

In some embodiments the replenishment module further subsequently modifies the signal simultaneously to both terminals to continuously display a third visual characteristic different than the first and second visual characteristics and responsive to the user acknowledging a receipt of the requested replenishment of inventory that was previously in transit (specification pg. 15:14-18). For example, the third visual characteristic can be a third color different than the first and second colors, such as by highlighting the portion of both terminals green (specification pg. 15:18-23).

Embodiments of the present invention as recited by the language of independent claim 15 contemplate a method for replenishing inventory (such as the method depicted by steps in FIG. 2). The method includes establishing a supply chain communication link between a user's

terminal and a supplier's terminal (such as 205, specification pg. 10:10-14). The method also includes continuously displaying a signal having a first visual characteristic simultaneously to both terminals in response to the user requesting a replenishment of inventory (such as 225, 230, specification pg. 12:10 to pg. 13:6). The method also includes subsequently modifying the signal simultaneously to both terminals to continuously display a second visual characteristic different than the first visual characteristic responsive to the supplier sending the requested replenishment of inventory and during the time that the requested replenishment of inventory is in transit to the user (such as 245, 250, specification pg. 14:4-12).

Embodiments of the present invention as recited by the claims that depend from independent claim 15 contemplate the continuously displaying step and the subsequently modifying step are characterized by said first and second visual characteristics being graphical representations of data (specification pg. 14:18-23). For example, the continuously displaying step and the subsequently modifying step can be characterized by the first visual characteristic being a first color and the second visual characteristic being a second color different than the first color (specification pg. 14:12-14). In some embodiments the continuously displaying step can be characterized by the first visual characteristic, including highlighting a portion of both terminals red (specification pg. 13:3-6). The subsequently modifying step can be characterized by the second visual characteristic, including highlighting the portion of both terminals yellow (specification pg. 14:14-18).

The method can further include subsequently twice modifying the signal simultaneously to both terminals to continuously display a third visual characteristic different than the first and second visual characteristics and responsive to the user acknowledging a receipt of the requested replenishment of inventory that was previously in transit (specification pg. 15:15-18). For example, the subsequently twice modifying the signal step can be characterized by the third

visual characteristic being a third color different than the first and second colors (specification pg. 15:18-20). In some embodiments the subsequently twice modifying the signal step can be characterized by the third visual characteristic including highlighting the portion of both terminals green (specification pg. 15:21 to pg. 16:2).

VI. GROUNDS OF REJECTION TO BE REVIEWED ON APPEAL

Claims 15 and 26-30 stand rejected under 35 USC 101 for allegedly reciting non-statutory subject matter.

Claim 8, 10-15, and 24-32 stand rejected under 35 USC 103 as allegedly being unpatentable over Li (2003/0004784) in view of Hill (2004/0034581).

VII. ARGUMENT

THE SECTION 101 REJECTION OF CLAIMS 15 AND 26-30 IS REVERSIBLE ERROR BECAUSE APPELLANT HAS SHOWN THAT THE REJECTED CLAIMS RECITE STATUTORY SUBJECT MATTER

1. The Office's rationale for the rejection is wrong on the facts.

The Office stated the following as its rationale for maintaining the rejection of claim 15:

In this present case, the term “continuously displaying a signal” does not make it statutory.¹

Appellant has shown that the Office's stated rationale is merely an irrelevant statement because Appellant has never taken the position that “continuously displaying a signal” in any way makes claim 15 statutory. Rather, Appellant's stated position is that claim 15 is directed to statutory subject matter because it recites a transformation of an article to a different state or thing,² in terms of *displaying a signal...subsequently modifying the signal*, where that

¹ Advisory Action of 3/13/2009.

² *In re Bilski*, 545 F.3d 943, 954 (Fed. Cir. 2008 *en banc*).

transformation is both perceptible and represents a change of state of a physical object, as described below.³ The Office's rebuttal is substantively unresponsive to Applicant's stated position and as such is irrelevant to the merits of this case.

2. Appellant has shown that the signal transformation feature of claim 15 is directed to statutory subject matter.

Although possibly perceived as problematic for reciting a signal transformation, Appellant has shown that claim 15 is directed to statutory subject matter because the transformed signal is featured as being visually depicted and the visual depiction represents a featured changed state of a physical object.⁴

Reiterating a summary of Appellant's evidence in the record, *In re Bilski* confirmed the machine-or-transformation requirement of Section 101 for method claims handed down by *Dier* and its progeny cited by the Office.⁵ As noted by the Office, independent claim 15 is not limited to a machine-implemented process, so patentability in view of the requirements of Section 101 must come from evidence that it "transforms a particular article into a different state or thing."⁶

Claim 15 recites *displaying a signal having a first visual characteristic simultaneously to both terminals in response to the user requesting a replenishment of inventory....* Claim 15 also recites *subsequently modifying the signal simultaneously to both terminals to continuously display a second visual characteristic different than the first visual characteristic responsive to the supplier sending the requested replenishment of inventory and during the time that the requested replenishment of inventory is in transit to the user.*

Prior to *Bilski*, the Federal Circuit held in *Nuijten* that transitory electrical and electromagnetic signals, in and of themselves, propagating through some medium are not

³ Applicant's Pre Brief Request ppg. 1-2; Applicant's Response of 2/24/2009 pg. 7.

⁴ Applicant's Pre Brief Request, pg. 1, Applicant's Response of 2/24/2009 ppg. 7-10, both relying on *In re Bilski*.

statutory subject matter.⁷ The *Nuijten* panel reasoned that articles of manufacture under Section 101 are limited to tangible articles, and that tangibility as related to a signal requires that the signal be perceptible.⁸ Rejected claim 15 is distinguishable over the result in *Nuijten* because the recited signal transformation is clearly perceptible. That is, the signal initially features a *first visual characteristic*, then it is subsequently modified (transformed) to feature a *second visual characteristic different than the first visual characteristic*.

Bilski did nothing to disturb the line of reasoning in *Nuijten*, but further reasoned that the requisite transformation exists so long as the perceptibility represents changing some tangible object to a different state or thing.⁹ Applying *Bilski* to rejected claim 15, clearly the recited visual depictions do indeed represent different states of a specific tangible object. Particularly, the *first visual characteristic* represents the location of the *requested replenishment of inventory* as being in the supplier inventory. Conversely, the *second visual characteristic* represents the location of the *requested replenishment of inventory* as being in transit from the supplier inventory to the user inventory – it is no longer located in the supplier inventory. The featured transformation represents the changed state, the locations, of a tangible object, the *requested replenishment of inventory*. Therefore, claim 15 recites patentable subject matter according to *Bilski* because the transformation of the signal is perceptible and represents a changed state of a specific physical object.

⁵ Office Action of 12/24/2008 pg. 2 para. 3.

⁶ Note 2.

⁷ *In re Nuijten* 500 F.3d 1346, 1353 (Fed. Cir. 2007).

⁸ Applicant's Response of 2/24/2009 pp. 7-8 quoting *In re Nuijten* at 1356-1357: "Moreover, any tangibility arguably attributed to a signal is embodied in the principle that it is perceptible...."

⁹ Applicant's Response of 2/24/2009 pp. 8-8 quoting *In re Bilski* at 962-963: "So long as the claimed process is limited to a practical application of a fundamental principle to transform specific data, and the claim is limited to a visual depiction that represent specific physical objects or substances, there is no danger that the scope of the claim would wholly pre-empt all uses of the principle."

3. The Office's rationale for maintaining the rejection is wrong on the law.

The Office further stated the following as its rationale for maintaining the rejection of claim 15:

The previous Office Action clearly stated that a claimed process must either (1) be tied to another statutory class (such as a particular apparatus). As such, claim 15 is still remaining non-statutory.¹⁰

The Office's stated rationale is ambiguous. On the one hand, the Office appears to be taking the position here that a process claim must be tied to an apparatus or else it recites non-statutory subject matter. If that is the case, then the Office's rationale is clearly based on a misstatement of the law. Again, *Dier's* machine-or-transformation requirement remains the law today as most recently affirmed by *Bilski*, providing that a process claim recites statutory subject matter if either it is tied to another statutory class or it transforms an article into a different state or thing.¹¹

On the other hand, the Office appears to have made a typographical mistake here because it acknowledged the machine-or-transformation requirement of Section 101 in the previous Office Action,¹² and because it states "either" but then only enumerates "(1)" thereafter. If that is the case, then it would appear the Office's rationale is no more than an irrelevant statement because Appellant has admitted that claim 15 is not tied to an apparatus, but rather that it recites a transformation in accordance with the legal options recognized as satisfying Section 101.¹³

4. Conclusion

The Office has effectively not rebutted Appellant's evidence that claim 15 is directed to patentable subject matter, Appellant having shown it features a transformation of a signal that is

¹⁰ Advisory Action of 3/13/2009.

¹¹ *In re Bilski*, 545 F.3d 943, 954-956 (Fed. Cir. 2008)

perceptible and that represents different states of an article. Appellant therefore respectfully requests that the Board reverse the rejection of claim 15 and the claims depending therefrom.

THE SECTION 103 REJECTION OF CLAIMS 8, 10-15, AND 24-32 IS REVERSIBLE
ERROR BECAUSE THE OFFICE HAS FAILED TO SHOW THE PRIOR ART INCLUDES
ALL THE RECITED FEATURES OF THE REJECTED CLAIMS

Patentability of Claim 8

1. The Office has repeatedly misstated Appellant's position regarding the requirements for *prima facie* obviousness.

The Office repeats in the Advisory Action its concern previously stated in its final rejection that it believes Appellant has taken the position that *prima facie* obviousness requires a showing that the cited references teach all the features of the rejected claims:

Applicant argues that...(ii) The cited references fail to suggest the features of the rejected claims...The Examiner is concerned that Applicant apparently ignores the mandate of the numerous court decisions supporting the position given above. The issue of obviousness is not determined by what the references expressly state but by what they would reasonably suggest to one of ordinary skill in the art....¹⁴

However, contrary to the Office's assertion, Appellant has not taken the position that *prima facie* obviousness requires that the cited references suggest the features of the rejected claims.

Reiterating Appellant's evidence in the record, *KSR* left untouched the requirement that a teaching or suggestion for each claim limitation must be shown in the prior art in order to substantiate a *prima facie* case of obviousness.¹⁵ Where the cited references fail to teach or

¹² Office Action of 12/24/2008 pg. 2 para. 3:4-8.

¹³ Applicant's Response of 2/24/2009 pg. 7.

¹⁴ Advisory Action of 3/13/2009.

¹⁵ Applicant's Response of 2/24/2009 ppg. 10-11 and Applicant's Pre Brief Request ppg. 2-3, both citing *In re Royka*, 180 USPQ 580 (CCPA 1974); *In re Ochiai*, 71 F.3d 1565, 1572 (Fed. Cir. 1995); *In re Wilson*, 165 USPQ 494, 496 (CCPA 1970); MPEP 2143.03; MPEP 2141.

suggest a feature of the rejected claims, the Office is obligated to bridge that gap in the teachings of the cited references by articulating an objective reason with some rational underpinning as to why the skilled artisan would find the differences between the claimed subject matter and what the cited references teach to be obvious.¹⁶ For reasons discussed below, Appellant's stated position is that the Office has failed to meet that burden.

2. The Office misstates the facts in the record regarding its own rationale for the rejection.

The Office alleges in the Advisory Action that Appellant misstated the record in arguing its position that the prior art does not teach at least the *second visual characteristic* feature:

Applicant argues that...(iii) Hill does not teach "a signal that displays the second visual characteristic in the claim."...With respect to Applicant's third argument, the Examiner respectfully noted that He relied upon the teaching of Li (See Page 3, Paragraphs 0032-0033) which correspond to Applicant's claimed feature. Therefore, Applicant's argument is not persuasive and the rejection is hereby sustained.¹⁷

However, in the Final Action of 12/24/2008 the Office's rationale expressly states that Li does not teach the *second visual characteristic*:

Li does not explicitly disclose...modify the signal simultaneously to both terminals to continuously display a second visual characteristic....¹⁸

In that event the Office relied on Hill to cure the deficiency of Li:

However, these features are known in the art, as evidenced by Hill. In particular, Hill suggests...to subsequently modify the signal simultaneously to both terminals to continuously display a second visual characteristic different than the first visual characteristic responsive to the supplier sending the requested replenishment of inventory and during the time that the requested replenishment of

¹⁶ *KSR v. Teleflex*, 550 U.S. 398, 418 (2007); MPEP 2143.03; MPEP 2141.

¹⁷ Advisory Action of 3/13/2009.

¹⁸ Office Action of 12/24/2008 pg. 3 (emphasis added).

inventory is in transit to the user (See Hill, Page 5, Paragraphs 0043-0045).¹⁹

In terms of the previous claim language, in the Office Action of 5/13/2008 the Office's rationale explicitly states the Li does not disclose the substantive forerunner to the *second visual characteristic*:

Li does not explicitly disclose alerting a second person that said low inventory part has been sent and continuing to alert said second person until the part has been received....²⁰

In that event the Office relied on Eicher to cure the deficiency of Li:

However, this feature is known in the art, as evidenced by Eicher. In particular, Eicher suggests that the method having alerting a second person that said low inventory part has been sent and continuing to alert said second person until the part has been received (See Eicher Page 13, Paragraph 0156; Page 17, Claim 21)....²¹

Contrary to the Office's assertion in the Advisory Action, the Office does not cite Li paras. 0032-0033 anywhere in the record. It is actually the Office, not Appellant, that has misstated the record in regard to the Office's own rationale for its *prima facie* case regarding the *second visual characteristic* feature of claim 8.

3. Li paras. 0032-0033 do not cure the deficiency of the Office's stated rationale in the record for *prima facie* obviousness.

As discussed above, the Office raises Li paras. 0032-0033 for the first time in the Advisory Action. Paras. 0032-0033 of Li generally disclose the structures depicted in its FIGS. 1A and 1C:

¹⁹ *Id.* at pg. 4 (emphasis added).

²⁰ Office Action of 5/13/2008 pg. 2.

²¹ *Id.* at pg. 4.

As illustratively shown in FIG. 1A, various sensors 101 are coupled to various gateways 102. It is to be understood that the number and connectivity of the sensors and gateways is dependent on the particular application. For example, the sensors 101 and one or more of the gateways 102 may be operatively coupled through a wireless network, a home network, a wide area network, and/or a local area network. For example, the network may be a communication network based on Bluetooth, HomeRF, 802.11, CDPD (Cellular Digital Packet Data), GPRS (General Packet Radio Service), P1394, and Ethernet. As is known, 802.11 is the IEEE standard for wireless local area networks. P1394, also known as Firewire, is a high speed network protocol for transmitting digital video (many new digital video camcorders have a P1394 interface). Each gateway 102 receives the inventory information collected from its associated sensors 101. Thus, in the case of a home networking application, the sensors may be located throughout the home to monitor the inventory condition or status of various equipment or systems in the home. The sensors then transmit the information to one or more gateways in the home (or outside the home) via the communications network coupling the sensors and the gateways.

Referring now to FIG. 1C, a block diagram illustrates a generalized hardware architecture of a computer system suitable for implementing a gateway. The gateway may comprise a processor 140, memory 142, I/O devices 144, and a network interface 146. It is to be appreciated that the term "processor" as used herein is intended to include any processing device, such as, for example, one that includes a CPU (central processing unit) and/or other processing circuitry. The processor may also include a digital signal processor, as is well known in the art. The term "memory" as used herein is intended to include memory associated with a processor or CPU, such as, for example, RAM, ROM, a fixed memory device (e.g., hard drive), a removable memory device (e.g., diskette), flash memory, etc. In addition, the term "input/output devices" or "I/O devices" as used herein is intended to include, for example, one or more input devices (e.g., keyboard, mouse, etc.) for entering data to the processing unit, and/or one or more output devices (e.g., CRT display, printer, etc.) for presenting results associated with the processing unit. It is also to be understood that the term "processor" may refer to more than one processing device and that various elements

associated with a processing device may be shared by other processing devices.²²

The skilled artisan having read the specification readily understands that paras. 0032-0033 of Li do not, neither alone nor in combination with any other teaching, teach at least *modify the signal simultaneously to both terminals to continuously display a second visual characteristic different than the first visual characteristic responsive to the supplier sending the requested replenishment of inventory and during the time that the requested replenishment of inventory is in transit to the user as featured by claim 8.*

4. Appellant has shown that the Office has failed to substantiate *prima facie* obviousness.

Reiterating a summary of Appellant's stated position in the record, Appellant agrees with the Office's stated position to the extent that Li does not disclose at least the *second visual characteristic* feature of claim 8.²³ The Office broadly relies on Hill's paras. 0043-0045 without specificity to allegedly cure the deficiency of Li in that regard. Appellant has shown, without rebuttal by the Office, that the skilled artisan having read Hill does not find any evidence in the three paragraphs the Office relies on, or anywhere else in Hill, that it teaches a signal that displays the *second visual characteristic* as featured by claim 8.²⁴

The featured *second visual characteristic* represents the state of the *requested replenishment of inventory* during the interval after it has been sent out of the supplier inventory but before it has been received into the user inventory; that is, the state while it is in transit from the supplier inventory to the user inventory. In other words, the *second visual characteristic* display represents the physical location of the *requested replenishment of inventory* being neither in the supplier inventory nor in the user inventory.

²² Li paras. [0032-0033].

²³ Applicant's Pre Brief Request pg. 3; Applicant's Response of 2/29/2009 pg. 11.

The only reference to “location” in the passage of Hill relied on by the Office (and elsewhere) is the location of the sensor.²⁵ The location of the sensor is only relevant to the location of the requested replenishment inventory while it remains in the supplier inventory. The location of the sensor is irrelevant to the location of the requested replenishment inventory during transit from the supplier inventory to the user inventory as featured by the rejected claim.

Also included in the passage relied on by the Office is a reference to an illustrative embodiment of a product marketed as SuppliLink.²⁶ Following is an excerpt of a product sheet obtained at the website²⁷ for SuppliLink that is marked up for discussion sake:

²⁴ Applicant's Pre Brief Request ppg. 3-4; Applicant's Response of 2/29/2009 ppg. 11-12.

²⁵ Hill para. [0043]:11-12.

²⁶ Hill para. [0045]:26-29; at www.visibleinventory.com

²⁷ <http://www.visibleinventory.com/pdf/SuppliLinkDataSheetFeb04.pdf>

Product Profile: SuppliLink™ Software Solution

- Visible Inventory's *iSeries* sensor products continuously measure and communicate their inventory level to the *SuppliLink* software. From there, it can be automatically communicated to specific points throughout your Supply Chain.
- Emails to internal personnel or suppliers can be automatically sent when an *iSeries* sensor reaches a specific re-order quantity by part or by stocking location. Email notifications can be set to be periodically resent until necessary replenishment has been made.
- Emails can also be sent if any part or supply item reaches a critical level and an additional notification or action is required. *SuppliLink* will also monitor maximum part levels and take action when an overstock condition exists.
- Custom views by planner/buyer, work cell, product line, commodity or any user defined field are easily set up. With a single mouse click key personnel can then see their items and view the current, real-time status.
- Our Replenish view indicates the items that are at or below their replenishment level. As iSeries sensor products are re-filled those items are automatically removed from this view. This screen can be permanently displayed in a stockroom, warehouse or work cells feeding other work cells to continually and automatically indicate the items that need to be replenished. Parts that reach a critical level switch to red to indicate additional action may need to take place.*
- Summary or detailed emails to suppliers can be automatically generated at timed intervals indicating just the items that are at a replenish point or the quantities of all items. This feature allows your supply chain to track real-time usage information.

Real-Time Inventory Measurement and Control at your Desktop or Remotely

The *iSeries* of products provide highly accurate, real-time inventory visibility and control for many industries and for a wide range of items. *SuppliLink* software and wireless network collect real-time information from each remote sensor and populate the *SuppliLink* database. From there, quantity, status, reorder information and history can be viewed through *SuppliLink* from any point on your network, emailed or viewed over the Web using *iVision*.

The screenshot shows the SuppliLink software interface. At the top, there's a menu bar with options like File, Edit, View, Database, Reports, Settings, and Help. Below the menu is a toolbar with icons for various functions. The main window displays a table of inventory items. The table has columns for Part Number, Part Description, Stock, Status, and Reorder Level. A red circle highlights a specific item in the table. To the left of the table, there are handwritten labels: 'V', 'B', 'R', 'Y', 'W', 'C', 'E', 'M', 'A', 'S', 'L', 'I', 'N', 'K', 'S', 'O', 'F', 'T', 'W', 'A', 'R', 'E'. Below the table, there are handwritten labels: 'Color', 'White', 'Yellow', 'Red', 'Blue', 'Status', 'OK', 'Replenish', 'Critical', 'Exceeds Max.'.

Visible Inventory, Inc.
Web Site: www.visibleinventory.com

Benefits

The *iSeries* of products were developed to address the needs of manufacturers, distributors and healthcare organizations that require highly accurate, real-time control of their inventories or supplies. In these environments, costly "safety" inventories or crippling shortages due to inaccurate counts, misplaced items and delays in communicating replenishment requests to suppliers cannot be tolerated. The Visible Inventory technology specifically addresses these issues.

SuppliLink Profile
Sales and Support: 603-894-5858

Appellant notes that the fifth bullet point indicates that the display indicates which items are at or below the replenishment level in the user's inventory. The display changes when the requested replenishment inventory is received into the user's inventory, not during transit as claimed.

The colored sample display on the SuppliLink website shows the color-coded display scheme. The non-color photocopy above is marked up to show that the colored version of the display uses the four colors of white, yellow (Y), red (R), and blue (B). The corresponding "Part Status" column is circled for emphasis. If the part status for a part listed in a row is "OK," then the row is colored white. The row changes color to yellow when the user inventory drops sufficiently to trigger the "Replenish" status. The row changes color to red if the user inventory drops further to the level that it triggers the "Critical" status. The row changes color to blue if the user inventory "Exceeds Max."

This evidence from even the passage of Hill relied upon by the Office clearly shows that no *second visual characteristic* is displayed when the *requested replenishment of inventory* has been sent out of the supplier inventory but before it has been received into the user inventory, as featured by rejected claim 8.

A *prima facie* case of obviousness requires a showing of a teaching for each claim limitation appearing in the claim.²⁸ In construing a claim term, the Office is obligated to apply the broadest reasonable interpretation consistent with the specification.²⁹ An interpretation that is inconsistent with the specification is not reasonable.³⁰ Further, the Office is obligated to construe the claim language in accordance with its plain meaning.³¹

²⁸ *In re Royka*, 180 USPQ 580 (CCPA 1974); MPEP 2143.

²⁹ *Phillips v. AWH Corp.*, 75 USPQ2d 1321 (Fed. Cir. 2005)(en banc); MPEP 2111.

³⁰ *In re Morris*, 44 USPQ2d 1023 (Fed. Cir. 1997).

³¹ *Phillips, supra*; MPEP 2111.01.

Here, the Office has failed to substantiate evidence to back up its assertion that Hill teaches or suggests at least the *replenishment module...to subsequently modify the signal... to continuously display a second visual characteristic...responsive to the supplier sending the requested replenishment of inventory and during the time that the requested replenishment of inventory is in transit to the user* as featured by claim 8.

Where the Office has not shown that Li and Hill teach all the features of the rejected claim, the Office has also not filled the gap in the teachings of the references by substantiating an objective reason as to why the skilled artisan would find the differences to be obvious between what is claimed and what is taught. Therefore, the Office has not substantiated *prima facie* obviousness.

Appellant has shown that the cited references do not teach or suggest at least the *second visual characteristic* as featured by claim 8. It is reversible error that the Office ignores Appellant's evidence by taking the position that Appellant is allegedly only arguing an unsubstantiated conclusion:

Rather, Applicant does not point to any specific distinction(s) between the features disclosed in the references and the features that are presently claimed...Applicant has failed to specifically point out how the language of the claims patentably distinguishes them from the applied references. Also, arguments or conclusions of Attorney cannot take the place of evidence....³²

5. Conclusion.

The Office has not effectively rebutted Appellant's evidence that the Office has failed to substantiate *prima facie* obviousness, Appellant having shown that the Office failed to substantiate evidence that the prior art teaches all the features of claim 8. Appellant therefore

³² Advisory Action of 3/13/2009.

respectfully requests that the Board reverse the rejection of claim 8 and the claims depending therefrom.

Patentability of Claim 15

Claim 15 recites the same subject matter as claim 8 discussed above: *subsequently modifying the signal simultaneously to both terminals to continuously display a second visual characteristic different than the first visual characteristic responsive to the supplier sending the requested replenishment of inventory and during the time that the requested replenishment is in transit to the user.* The Office's rationale for the rejection of claim 15 is the same as that for claim 8.

Therefore, for the reasons set forth above, the Office has likewise not effectively rebutted Appellant's evidence that the Office has failed to substantiate *prima facie* obviousness, Appellant having shown that the Office failed to substantiate evidence that the prior art teaches all the features of claim 15. Appellant therefore respectfully requests that the Board reverse the rejection of claim 15 and the claims depending therefrom.

Respectfully submitted,

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VIII. CLAIMS APPENDIX

1. – 7. (Canceled)

8. (Previously presented) A system for replenishing low inventory, comprising:
a first terminal associated with a user's site for entering and displaying information;
a second terminal associated with a supplier's site for entering and displaying
information;
a network connected to said first terminal and said second terminal for exchanging
information between said first terminal and said second terminal; and
a replenishment module executing computer readable instructions stored in memory to
continuously display a signal having a first visual characteristic simultaneously to
both terminals in response to the user requesting a replenishment of inventory, and to
subsequently modify the signal simultaneously to both terminals to continuously
display a second visual characteristic different than the first visual characteristic
responsive to the supplier sending the requested replenishment of inventory and
during the time that the requested replenishment of inventory is in transit to the user.

9. (Canceled)

10. (Previously presented) The system of claim 8 wherein said first and second visual
characteristics are graphical representations of data.

11. (Previously presented) The system of claim 8 wherein said first visual characteristic
is a first color and said second visual characteristic is a second color different than the first color.

12. (Previously presented) The system of claim 8 wherein said first visual characteristic includes highlighting a portion of both terminals red.

13. (Previously presented) The system of claim 8 wherein said second visual characteristic includes highlighting the portion of both terminals yellow.

14. (Previously presented) The system of claim 25 wherein said third visual characteristic includes highlighting the portion of both terminals green.

15. (Previously presented) A method for replenishing inventory, comprising:
establishing a supply chain communication link between a user's terminal and a
supplier's terminal;
continuously displaying a signal having a first visual characteristic simultaneously to
both terminals in response to the user requesting a replenishment of inventory; and
subsequently modifying the signal simultaneously to both terminals to continuously
display a second visual characteristic different than the first visual characteristic
responsive to the supplier sending the requested replenishment of inventory and
during the time that the requested replenishment of inventory is in transit to the user.

16. – 23. (Canceled)

24. (Previously presented) The system of claim 8 wherein the replenishment module
further subsequently modifies the signal simultaneously to both terminals to continuously display
a third visual characteristic different than the first and second visual characteristics and
responsive to the user acknowledging a receipt of the requested replenishment of inventory that
was previously in transit.

25. (Previously presented) The system of claim 24 wherein the third visual characteristic
is a third color different than the first and second colors.

26. (Previously presented) The method of claim 15 wherein the continuously displaying
step and the subsequently modifying step are characterized by said first and second visual
characteristics being graphical representations of data.

27. (Previously presented) The method of claim 15 wherein the continuously displaying step and the subsequently modifying step are characterized by said first visual characteristic being a first color and said second visual characteristic being a second color different than the first color.

28. (Previously presented) The method of claim 15 wherein the continuously displaying step is characterized by said first visual characteristic including highlighting a portion of both terminals red.

29. (Previously presented) The method of claim 15 wherein the subsequently modifying step is characterized by said second visual characteristic including highlighting the portion of both terminals yellow.

30. (Previously presented) The method of claim 15 further comprising subsequently twice modifying the signal simultaneously to both terminals to continuously display a third visual characteristic different than the first and second visual characteristics and responsive to the user acknowledging a receipt of the requested replenishment of inventory that was previously in transit.

31. (Previously presented) The system of claim 30 wherein the subsequently twice modifying the signal step is characterized by said third visual characteristic being a third color different than the first and second colors.

32. (Previously presented) The system of claim 31 wherein the subsequently twice modifying the signal step is characterized by said third visual characteristic including highlighting the portion of both terminals green.

IX. EVIDENCE APPENDIX

No additional evidence is included.

X. RELATED PROCEEDINGS APPENDIX

There exist no relevant related proceedings concerning this Appeal before the Board.